

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PAUL PARSHALL,

Plaintiff,

**V.**

COMMUNITY BANK, et al.,

Defendants.

Case No. CV 18-4821 FMO (AFMx)

## ORDER DISMISSING ACTION WITHOUT PREJUDICE

Plaintiff filed his complaint on May 31, 2018. (Dkt. 1). By order dated August 15, 2018, plaintiff was ordered to show cause, on or before August 22, 2018, why this action should not be dismissed for plaintiff's failure to complete service of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure.<sup>1</sup> (See Dkt. 7, Court's Order of August 15, 2018). Plaintiff was admonished that a "court may dismiss the action prior to the 90 days [provided in Rule 4(m)] if plaintiff[] [has] not diligently prosecuted the action" and that "[f]ailure to file a timely response to th[e] Order to Show Cause may result in the action being dismissed for lack of prosecution and for failure to comply with the orders of the court, pursuant to Local Rule 41." (Id.). As of the date of this Order, plaintiff has not responded to the Order to Show Cause nor filed proofs of service of the summons and complaint on any defendant. (See, generally, Dkt.).

<sup>1</sup> All further “Rule” references are to the Federal Rules of Civil Procedure.

1 Rule 4(m) provides that a court, on its own initiative, “must dismiss the action without  
2 prejudice” if service is not effected “within 90 days after the complaint is filed[.]” In addition, a  
3 district court may dismiss an action for failure to prosecute or to comply with court orders. Fed.  
4 R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386 (1962) (authority  
5 to dismiss for failure to prosecute necessary to avoid undue delay in disposing of cases and  
6 congestion in court calendars); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied,  
7 506 U.S. 915, 113 S.Ct. 321 (1992) (district court may dismiss action for failure to comply with any  
8 court order). Dismissal, however, is a severe penalty and should be imposed only after  
9 consideration of the relevant factors in favor of and against this extreme remedy. Thompson v.  
10 Housing Auth. of Los Angeles, 782 F.2d 829, 831 (9th Cir.), cert. denied, 479 U.S. 829, 107 S.Ct.  
11 112 (1986). These factors include: (1) the public’s interest in expeditious resolution of litigation;  
12 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
13 policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.  
14 Id.; Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986).

15 Pursuant to Rules 4(m) and 41(b) and the Court’s inherent power to achieve the orderly and  
16 expeditious disposition of cases, Link, 370 U.S. at 629-30, 82 S.Ct. at 1388, and in light of the  
17 factors outlined in Henderson, supra, dismissal of this action without prejudice for failure to effect  
18 service within the specified time and comply with the Court’s Order to Show Cause issued on  
19 August 15, 2018 (Dkt. 7), is appropriate.

20 Based on the foregoing, IT IS ORDERED that judgment be entered dismissing this action,  
21 without prejudice, for failure to effect service, lack of prosecution, and failure to comply with the  
22 order of the court. See also Fed. R. Civ. P. 4 & 41(b); Link, 370 U.S. at 629-30, 82 S.Ct. at 1388.  
23 Dated this 30th day of August, 2018.

24  
25 /s/  
26 Fernando M. Olguin  
27 United States District Judge  
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